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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/554,149	10/21/2005	Rinat O. Esenal	98006-26US	3257

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EXAMINER
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WINAKUR, ERIC FRANK

ART UNIT	PAPER NUMBER
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3768

MAIL DATE	DELIVERY MODE
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12/12/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/554,149

Applicant(s)

ESENAL ET AL.

Examiner

Eric F. Winakur

Art Unit

3768

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 27 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 45-81 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 69 is/are allowed.
- 6) ☒ Claim(s) 45-68 and 73 is/are rejected.
- 7) ☒ Claim(s) 70-72 and 74-81 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 9/27/07
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### ***Claim Objections***

2. Claims 45, 53, 64, 65, and 70 - 81 are objected to because of the following informalities: The status identifier of claim 45 indicates that the claim was amended, but no amendments are shown in the text of the claim. As such, the claim has been treated as "previously presented" status for purposes of examination. It appears that claim 53 should depend from claim 52 to provide proper antecedent basis for the claim language. With regard to claim 64, it appears that the phrase "substance is selected" (line 2) should read "substance selected" to be grammatically consistent with the phrase that precedes it. With regard to claim 65, it appears that it should depend from claim 64 to provide proper antecedent basis for the claim language. With regard to claim 70, it appears that it should depend from claim 69 to provide proper antecedent basis for the claim terms. With regard to claims 71 - 76, 80, and 81, it appears that the claims should depend from claim 69, based upon the renumbering of the claims. With regard to claim 77, it appears that the phrase "substance is selected" (line 2) should read "substance selected" to be grammatically consistent with the phrase that precedes it. With regard to claims 78 and 79, it appears that they should depend from claim 77 to provide proper antecedent basis for the claim terms. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 112***

3. The rejection of claims 49, 60, and 73 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention is hereby maintained for the reasons of record. Although Applicant's remarks (page 10) indicate that amendments were made to overcome the rejections of these claims, no amendments were made to these claims and the remarks appear to be relevant to amended claims 50, 62, and 75 instead.

***Claim Rejections - 35 USC § 102***

4. The rejection of claims 45 - 67 under 35 U.S.C. 102(b) as being anticipated by Hatschek is hereby maintained for the reasons of record.

***Claim Rejections - 35 USC § 103***

5. The rejection of claim 68 under 35 U.S.C. 103(a) as being unpatentable over Hatschek as applied to claim 57 above, and further in view of Takeuchi et al. is hereby maintained for the reasons of record.

***Response to Arguments***

6. Applicant's arguments filed 27 September 2007 have been fully considered but they are not persuasive. Applicant contends that the claims define over Hatschek since Hatschek is concerned with measurements in capillaries in the dermis and utilizes heating while the invention of the instant application measures directly from a large vessel on the underside of the tongue and does not need heating. With regard to Applicant's contention regarding the disclosure of heating elements in Hatschek, it is noted that Applicant's claims include the open-ended transition phrase "comprising". As such, even if Hatschek includes additional elements, such as the heating elements, that

are not set forth in applicant's claims, so long as Hatschek discloses each of the claimed elements or steps (Applicant is referred to the prior Office action for these details), the claim does not define over Hatschek. Applicant further contends that Hatschek does not teach measurements from or a probe sized for obtaining measurements from a big vein associated with an underside of a patient's tongue. However, Applicant's attention is drawn to Figures 6 - 8, and the description of column 11, lines 41 - 64. It is noted that the size of the probes in on the order of dimensions of a finger. An object of the size and arrangement disclosed in Figure 8 can easily be inserted into a subject's mouth beneath the tongue, and indeed is designed for such placement, as suggested by Hatschek (column 11, lines 41 - 64). Further, as described in the referenced passage, the emitter and detector arrangements (23) are on the tip of the probe. It is noted that with regard to the rejection of claim 68, Applicant provides no further arguments than those addressed above. Thus, contrary to Applicant's assertions, Hatschek or Hatschek and Takeuchi et al. teach each of the claim limitations. As such, the rejections are proper and are hereby maintained.

***Allowable Subject Matter***

7. Claim 69 is allowed.
8. Claims 70 - 72 and 74 - 81 would be allowable if rewritten or amended to overcome the objections set forth in this Office action.
9. Claim 73 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

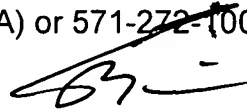
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric F. Winakur whose telephone number is 571/272-4736. The examiner can normally be reached on M-Th, 7:30-5; alternate Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 571/272-4956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Eric F Winakur  
Primary Examiner  
Art Unit 3768